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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2087/2011

Views adopted by the Committee at its 113th session (16 March–2 April 2015)

Submitted by:	Misilin Nona Guneththige and Piyawathie Guneththige (represented by the Asian Legal Resource Centre and Redress)
Alleged victim:	Thissera Sunil Hemachandra (the authors' son and nephew, respectively)
State party:	Sri Lanka
Date of communication:	20 July 2011 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 August 2011 (not issued in document form)
Date of adoption of Views:	30 March 2015
Subject matter:	Suspicious death in custody allegedly resulting from torture
Procedural issues:	Non-cooperation of State party
Substantive issues:	Arbitrary deprivation of life; torture and ill-treatment; lack of proper investigation; right to an effective remedy; right to liberty and security of person; respect for the inherent dignity of the human person.
Articles of the Covenant:	2 (para. 3); 6; 7; 9 (paras. 1, 2 and 4); 10 (para. 1)
Articles of the Optional Protocol:	None

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (113th session)

concerning

Communication No. 2087/2011*

Submitted by:	Misilin Nona Guneththige and Piyawathie Guneththige (represented by the Asian Legal Resource Centre and Redress)
Alleged victims:	Thissera Sunil Hemachandra (the authors' son and nephew, respectively)
State party:	Sri Lanka
Date of communication:	20 July 2011 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 2015,

Having concluded its consideration of communication No. 2087/2011, submitted to the Human Rights Committee on behalf of Thissera Sunil Hemachandra, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication,

Adopts the following:

Views pursuant to article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication are Misilin Nona Guneththige, the "first author", and Piyawathie Guneththige, the "second author". They submit the communication on behalf of their son and nephew, respectively, Thissera Sunil Hemachandra, who was born on 27 October 1969 and died on 26 July 2003 following head injuries sustained while in police custody. The authors claim that the victim was the subject of violations by Sri Lanka of article 6 (para. 1), article 7, article 9 (paras. 1, 2 and 4) and article 10 (para. 1), read alone and in conjunction with article 2 (para. 3), of the Covenant. They also claim that the State party has breached their rights, under article 7 read in conjunction with article 2 (para. 3). The authors are represented.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Muhumuza Laki, Photini Pazartis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

The facts as submitted by the authors

2.1 Sunil Hemachandra (also referred to in the present document as "Sunil") was a healthy and literate man with no criminal record. He was a daily paid labourer whose work consisted mainly of tapping rubber and climbing trees to pick coconuts and other fruits. Since 1979, he had been living with the family of his aunt, the second author, who is the sister of the first author (his mother).

2.2 On or around 28 June 2003, Sunil bought a lottery ticket, and learned the day after that he had won more than three million rupees (approximately $25,000). On the same day, a lottery sales agent named Lionel, described as being "well connected to the police",[1] came to the second author's house with a police officer. They suggested that Sunil apply for police protection. Sunil declined the offer. As Sunil did not possess a national identity card at that time, he used that of his aunt, the second author, to claim the lottery money. On 4 July 2003, Sunil, together with the second author and Lionel (the lottery sales agent), went to the Development Lotteries Board in Colombo and received the money against his lottery ticket, but in the name of the second author. The money was paid via a cheque issued by the Kollupitiya branch of the Bank of Ceylon. On 7 July 2003, the cheque was paid into a bank account held by the second author. On the same day, Sunil withdrew 2,100,000 rupees from the second author's bank account and purchased a van for 1,200,000 rupees which was registered under the second author's name. On or around 14 July 2003, he purchased a three-wheeler for the second author's granddaughter, and gave 5,000 rupees to his nephew as a gift.

2.3 On or around 21 July 2003, a team of police officers from Moragahahena Police Station arrived at the second author's house, looking for Sunil. They asked the second author whether Sunil had spent the lottery money, and one of the police officers warned that his "happiness will not last long". The police requested that Sunil report to Moragahahena Police Station.

2.4 On the same day, Sunil, accompanied by Chanaka Dinesh Kumara (referred to in the present document as "Chanaka"), an acquaintance whom Sunil had commissioned to drive his new van and son of Lionel (the lottery sales agent), reluctantly went to Moragahahena Police Station. At the station, one of the police officers (a sub-inspector) requested Sunil to pay money as "support". Sunil replied that the money was with the second author and declined to pay. The same police officer then insisted on a payment of 25,000 rupees "to cover the expenses of a procession of Vidyarathana Temple in Horana". Sunil agreed to pay and was allowed to leave the station.

2.5 In the late evening of 22 July 2003, five officers from Moragahahena Police Station arrived in a vehicle at the second author's house. After seeing Sunil sleeping in his room and identifying him as being "the one who won the lottery", several police officers proceeded to beat him, including by hitting him on his head. The police officers then proceeded to arrest Sunil and Chanaka. Before loading them into a police jeep, and also during the ride to Moragahahena Police Station, several police officers beat Sunil severely on his head and abdomen. Chanaka, who was seated opposite Sunil, was hit in the face several times when he asked the officers to stop the beatings.

2.6 Sunil and Chanaka were taken to Moragahahena Police Station and placed in a 5 foot by 8 foot cell, with several other detainees. On the morning of the following day (23 July 2003), Sunil was visibly unwell. He was bleeding from his nose and mouth, was not able to stand, and had to lie down. Chanaka alerted the police officers to Sunil's critical state of health. Instead of calling for medical assistance, the police officers asked Chanaka

[1] Affidavit of Chanaka Dinesh Kumara, dated 21 August 2003.

to take Sunil to the back yard to wipe the blood off his face. However the bleeding continued uninterruptedly from his nose and mouth, and he vomited blood clots. One of the police officers directed Chanaka to give Sunil an iron rod to hold, which is sometimes done in the case of epileptic attacks. The police officer seemingly believed, or wanted to give the impression, that Sunil was suffering from epilepsy, which was not the case.

2.7 On the same morning, at around 8 o'clock, the second author came to Moragahahena Police Station and found Sunil lying on the floor of the cell, bleeding from his nose and mouth. She alerted the police officers to Sunil's serious condition, but was chased away by them. The police officer told her that Sunil's condition resulted from epilepsy. It was not until around 10 a.m. on the same day that Sunil was finally taken to Horana Base Hospital in a police jeep. The second author, who visited him, was told by Sunil that he had been brutally assaulted by the police officers. He was in severe pain and his face was reddened and swollen.

2.8 Later on the same day (23 July 2003), two officers from Moragahâhena Police Station arrived at the hospital to record a statement from Sunil. Although the latter only managed to name himself, the police officers wrote something on two sheets of paper while talking to each other. They then obtained two impressions of Sunil's left thumb in lieu of his signature, although Sunil was capable of signing his name.

2.9 On 24 July 2003, the authors learned by chance that Sunil had been transferred to the national hospital in Colombo, where he had undergone brain surgery, and was being treated in intensive care. On 26 July 2003, the second author was informed by staff at the national hospital that Sunil had passed away earlier that day.

2.10 The authors detail here their efforts to bring the victim's case to the attention of the authorities of the State party: On 23 July 2003, the second author went to the office of the assistant superintendent of the Horana police and attempted to complain about Sunil's arrest and torture, but her complaint was not recorded and the superintendent did not receive her. On 26 July 2003, the authors and Chanaka — who had been released from detention on 23 July 2003 — visited Moragahahena Police Station and reported Sunil's death. Their statements were recorded by the assistant superintendent of the Horana police.

2.11 On 23 July 2003, the second author contacted the non-governmental human rights organization Janasansadaya, which helped her to complain to the Human Rights Commission of Sri Lanka. The authors also lodged a fundamental rights petition before the Supreme Court of Sri Lanka, on 8 September 2003, in which a number of officials and institutions were cited as respondents.[2] The authors' complaint before the national human rights commission remained unanswered until 21 August 2008, when the second author was informed that the procedure had been suspended as the same matter was pending before the Supreme Court (sic). The authors add that the national human rights commission has not been in contact with them since, and that there is no realistic prospect that it will reopen the inquiry following the dismissal of the case by the Supreme Court, as the national human rights commission's stated policy is that it is barred from further handling of a case where there has been a dismissal of a fundamental rights petition to the Supreme Court.

2.12 On 27 July 2003, the Additional Magistrate of the Colombo Chief Magistrate's Court opened an inquiry into Sunil Hemachandra's death. He heard the second author and Chanaka for this purpose. The Additional Magistrate reported, also on 27 July 2003, that in

[2] Police Constable Muthubanda (who led Sunil and Chanaka's arrests on 22 July 2003), Police Officer Maheepala (the officer in charge of Moragahahena Police Station), Police Constable Wijemanna (who warned the second author that the victim's happiness "will not last long"; see para. 2.3 above), the Inspector General of Police, and the Attorney General of Sri Lanka.

the Moragahahena Police Station police report, "there [was] no entry whatsoever revealing the reason for which [Sunil] had been arrested by the police". On 28 July 2003, the Additional Magistrate observed the victim's body in the mortuary, and noticed, among other injuries, "an injury of about one inch slightly above the buttocks, on the left side of the back". The procedure was then adjourned, at the request of Moragahahena Police Station, until 31 July 2003.

2.13 On 29 July 2003, a consultant judicial medical officer from Colombo conducted a post-mortem examination, and produced a report which was subsequently relied upon in the proceedings before the Supreme Court. The report documented ten pre-mortal injuries: four contusions, four abrasions, one periorbital hematoma ("black eye") around the left eye, and one surgical incision, but not the injury on the left side of the back observed the day before by the Additional Magistrate of Colombo. The direct cause of Sunil's death was identified as "acute subdural hemorrhage following a head injury caused by blunt trauma". The report identified four possible origins for the fatal hemorrhage: (a) a heavy blow to the victim's back with a weapon or from a kick with boots on; (b) a fall due to being pushed; (c) an accidental fall; or (d) a fit due to alcohol withdrawal or epilepsy.[3] The report concluded that it was "possible" that the cause of death was a fall following alcohol withdrawal, a finding seemingly derived solely from the discovery of an "enlarged and fatty liver" in the deceased's body.

2.14 On 31 July 2003, the Additional Magistrate of Colombo heard further witnesses who had been brought to the court in police vehicles; this was criticized by the author's lawyer as possibly resulting in undue influence over witnesses by the police. The Additional Magistrate overruled the exception and decided to accept the witnesses' testimonies.

2.15 On 8 August 2003, the Magistrate of Horana, to whom the inquiry was transferred from the Additional Magistrate of Colombo, directed the Senior Superintendent of the Panadura police to investigate and to produce the suspects before court, as the circumstances surrounding the victim's death seemed suspicious.

2.16 On 29 April 2004, the Attorney General decided that no charges would be filed in connection with Sunil Hemachandra's death, as there was no evidence of any assault against the victim. On 19 November 2004, the Magistrate of Horana removed the case from the roll, with sole reference to the Attorney General's decision of 29 April 2004.

2.17 The authors' petition, filed before the Supreme Court in September 2003, was only decided upon on 6 August 2010. The Supreme Court considered several grounds that might have served as a basis for Sunil Hemachandra's arrest: his attempt to assault the police, his consumption of liquor, and his alleged assertion that he would commit suicide if the police arrested Chanaka. With regard to the cause of death, the Supreme Court dismissed the application, concluding that "the fall being due to a fit following alcohol withdrawal [was] highly probable". It thereby endorsed the conclusion of the forensic report, and discarded the possibility of assault, for lack of conclusive evidence such as an injury.

2.18 The authors claim that they have no further remedy available. The criminal investigation led to the decision of the Attorney General of 29 April 2004 not to press charges, while the judgement rendered by the Supreme Court on 6 August 2010 was a final decision. The authors also stress that the proceedings lasted for over seven years, and were unduly prolonged.

[3] The authors claim that there is no medical record showing that Sunil suffered from epilepsy.

The complaint

3.1 The authors submit that the State party has failed to carry out an adequate investigation into the unlawful and arbitrary arrest and detention, torture, and cruel, inhuman and degrading treatment of Sunil, and into his death, in violation of article 6 (para. 1), article 7, article 9 (paras. 1, 2 and 4) and article 10, of the Covenant, read alone and in conjunction with article 2 (para. 3), of the Covenant.

3.2 Regarding article 6, the authors stress that Sunil Hemachandra was arbitrarily deprived of his life by the State party. They submit that in cases of custodial death, there is a presumption of State responsibility. This presumption applies equally whether, as in the present case, the victim died in hospital following a transfer from police custody, or as a result of injuries sustained in detention. The authors stress that the direct medical cause of Sunil's death is not clear. The report of the consultant judicial medical officer (para. 2.13) concluded that the cause of death could be a fall in a state of alcohol withdrawal, however the report is poor and inconclusive, as it does not explain which examinations were carried out, and also failed to detect the injury that was identified by the Additional Magistrate (para. 2.12). A second independent opinion[4] revealed several defects in the forensic examination report, including the absence of appropriate additional examinations, such as histological and toxicological examinations, inter alia to confirm the hypothesis of alcohol abuse, and to discard the possibility of torture, which was not even considered. In any event, even if the conclusions of the report of the judicial medical officer, relied upon by the Supreme Court, were to be accepted, four possibilities were evoked which could have triggered Sunil's death. Only that of alcohol withdrawal was considered. No further measures, such as identifying the police officers involved, taking their testimony, or examining the scene of the alleged violation, were taken to investigate possible causes of death other than alcohol withdrawal. The authors thus invite the Committee to draw the inference that the victim's death was a direct consequence of his ill-treatment, specifically, being severely beaten up on his head and abdomen by the police during and immediately after his arrest.

3.3 The authors submit, subsidiarily, that the authorities of the State party failed to take the requisite steps to protect Sunil Hemachandra's health and life while he was in detention. No medical examination was carried out upon his admission to the Moragahahena Police Station detention facility to establish whether he had any condition (e.g. intoxication, epilepsy or mental instability). Instead, he was placed in a very small cell with other detainees, with no medical supervision. When it was found that he was bleeding severely, no medical assistance was provided to him for a period of at least three hours. Sunil Hemachandra only started receiving medical treatment after his belated transportation to the hospital. This lack of prompt action in a situation of life-threatening injury to a detainee was, in itself, in violation of the State party's obligations under article 6 (para. 1) of the Covenant.

3.4 The authors further claim that Sunil Hemachandra was subjected to torture and cruel, inhuman or degrading treatment, in violation of article 7 of the Covenant. The officers of Moragahahena Police Station subjected him to severe beatings during the course of his arrest, in particular on the head. Beatings continued in the police jeep during the transfer of Sunil Hemachandra and Chanaka to Moragahahena Police Station, particularly in the form of beatings on Sunil's head and abdomen. Sunil Hemachandra died four days later. It has never been disputed, in particular throughout the Supreme Court proceedings, that his injuries were sustained while in police custody, although versions concerning the origin of the injuries varied. The authors submit that the burden of proof should be shifted

[4] Commissioned by the human rights organization Redress.

to the State party when injuries were sustained in police custody. It should thus be presumed that the injuries found on Sunil Hemachandra's body were inflicted by beatings by the officers of Moragahahena Police Station.

3.5 The authors add that under article 10 (para. 1) of the Covenant, the State party had a duty to guarantee proper medical care to Sunil Hemachandra while he was in detention. On 23 July 2003, the State party authorities were informed that Sunil was bleeding severely and was in a critical condition. Such a serious and potentially life-threatening situation required immediate medical treatment, including transfer to a hospital, given that adequate treatment could not be provided in situ. The actual response, however, was clearly inadequate: the co-detainee Chanaka was ordered to wipe the blood off the victim, to wash his face and to give him an iron rod. Even if this measure was taken out of a genuine belief that the victim was epileptic, the police officer should not have relied on his personal assessment and should have sought prompt medical advice. It took more than three hours for Sunil Hemachandra to be transferred to hospital. The authors conclude, therefore, that the rights of Sunil Hemachandra under article 7 and article 10 (para. 1), of the Covenant, were violated.

3.6 The authors also submit that the State party has breached article 7 in respect of them, by refusing to conduct an investigation into the death of their son and nephew, leaving them in continuous suffering due to the uncertainty surrounding the causes of his death. More than eight years after his death, both authors still do not know the exact circumstances surrounding the event, and the State party has yet to indict, prosecute or bring to justice anyone in connection with their relative's death in custody.

3.7 With respect to article 9 (paras. 1, 2 and 4), the authors submit that Sunil Hemachandra was not informed, at the time of the arrest, of the reasons for such arrest. Furthermore, the unacknowledged character of his arrest and detention effectively deprived him of any meaningful possibility to take proceedings before a court, in order to challenge the legality of his detention. There is no objective evidence to substantiate any of the allegations considered by the Supreme Court as reasons for his arrest (para. 2.17). The authors also stress that the practice of fabricating charges to deter complaints against the police is well documented.[5]

3.8 The allegation that the victim was drunk at the time of arrest was also not supported by any evidence. No medical examination was conducted upon his arrival at Moragahahena Police Station, and there are no hospital records to that effect. Even if the assertion was true, detention on this ground was unnecessary and unreasonable in the circumstances of the present case. With regard to the alleged ground for arrest, according to which the victim had threatened to commit suicide, the authors submit that there is no evidence in support of this allegation. The fact that Sunil Hemachandra was placed in a small cell, shared with other detainees, and without any medical or psychological assistance, is irreconcilable with the suggestion that he was detained to prevent self-harm. The victim's family was not informed about the place of detention, and he was not provided with an opportunity to contact his relatives, and had no legal representation. The authors add that the facts of the present case should be viewed in the context of the well-documented practice of police corruption in Sri Lanka, which has resulted in a series of cases involving extortion and ill-treatment. The authors conclude that Sunil Hemachandra's arrest and detention were unlawful and arbitrary.

[5] The authors refer to reports from the Asian Human Rights Commission ("Sri Lanka: cases of torture and ill-treatment recorded from 2006-2010") and from Redress ("Responses to human rights violations: the implementation of the right to reparation for torture in India, Nepal and Sri Lanka").

3.9 Concerning article 2 (para. 3), the authors submit that there were serious flaws in the investigation in the present case. The investigation was carried out by the same members of the police force (from Moragahahena Police Station) as those implicated in the victim's death, officers of Moragahahena Police Station conducted all important investigative actions — they took Sunil Hemachandra's statement on 23 July 2003 and the statements from the authors and Chanaka on 26 July 2003, none of the officers involved in the alleged violation was suspended or reassigned pending the inquiry, and the case was not referred to the special investigation unit.

3.10 As regards the judicial process, the magistrates limited the scope of their inquiry to the circumstances of Sunil Hemachandra's death. They had to rely on the evidence collected by the police officers, who lacked the requisite impartiality and independence. The Attorney General refused to inquire into the matter, despite the express order to do so from the Magistrate of Horana (paras. 2.15 and 2.16). The Supreme Court did not order any further investigative action, or a full separate investigation. The authorities failed to take prompt and effective action capable of establishing the truth about the circumstances surrounding the arrest, detention, torture and death of Sunil Hemachandra. Although the second author had complained about the torture of Sunil three days prior to his death, that is, on 23 July 2003, no forensic medical examination was ordered; no police officers involved in his arrest and detention were identified. Chanaka, who was arrested along with the victim, was only interrogated after Sunil Hemachandra's death, and by the officers of Moragahahena Police Station. Similarly, the second author, who was an eyewitness to the victim's arrest and beating in her house, was only interrogated after the victim's death, by the same police officers. The only measure taken promptly was to visit Sunil Hemachandra in hospital, while he was in critical condition, with a view to obtaining a false statement.

3.11 The authors add that the Supreme Court did not address these shortcomings, and did not conduct or commission another investigation. Instead, it relied upon the testimony and other evidence gathered directly by, or under the control of, the officers of Moragahahena Police Station, that is, implicated police officers. In addition, the Supreme Court proceedings lasted almost seven years, although there was nothing in terms of case complexity that could justify such a delay. The authors conclude that article 2 (para. 3), read in conjunction with article 6 (para. 1), article 7, article 9 (paras. 1, 2 and 4) and article 10 (para. 1), was breached in respect of Sunil Hemachandra.

3.12 By way of remedy, the authors request (a) a full and independent investigation into the circumstances of the arrest, detention, torture and custodial death of Sunil Hemachandra; (b) the payment of full and adequate compensation to the authors, which is proportionate to the seriousness of the violations and the damages and suffering inflicted; (c) a public apology containing an unequivocal acknowledgement of the numerous violations of the Covenant in the present case; (d) as full a rehabilitation as possible for the authors, including psychological counselling services if appropriate; and (e) the establishment of an independent body or institution tasked with investigating complaints into serious human rights violations committed by police and other law enforcement personnel, which is capable of documenting and investigating incidents of torture, following the recommendation of the Committee against Torture (see CAT/C/LKA/CO/2, para. 12 (a)).

Lack of cooperation from the State party

4. By notes verbales of 22 August 2011, 5 March 2012, 21 May 2012 and 6 July 2012, the State party was requested to submit information to the Committee on the admissibility and merits of the communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the authors' claims. It recalls that article 4

(para. 2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them, and to make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that they are substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

5.2 As required under article 5 (para. 2 (a)) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 In the absence of any submission by the State party on the admissibility of the communication, and noting the authors' statement that domestic remedies have proven to be unduly prolonged, the Committee declares the communication admissible, in as far as it appears to raise issues under article 6 (para. 1), article 7, article 9 (paras. 1, 2 and 4) and article 10 (para. 1), read alone and in conjunction with article 2 (para. 3), of the Covenant.

Consideration of the merits

6.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as required under article 5 (para. 1) of the Optional Protocol. It recalls that in the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that they are substantiated.

6.2 Regarding the authors' claim under article 6 in relation to the arbitrary deprivation of Sunil Hemachandra's life, the Committee recalls its jurisprudence, in which it determined that by arresting and detaining individuals, the State party takes the responsibility to care for their life,[6] and that a death in any type of custody should be regarded prima facie as a summary or arbitrary execution. Consequently, there should be a thorough, prompt and impartial investigation to confirm or rebut this presumption, especially when complaints by relatives or other reliable reports suggest unnatural death.[7] Sunil Hemachandra was arrested on 22 July 2003 at his place of residence by officers of Moragahahena Police Station. Four days later, that is, on 26 July 2003, he died in the national hospital in Colombo as a direct result of an "acute subdural hemorrhage following a head injury caused by blunt trauma". Although the victim was bleeding uninterruptedly, and was visibly in a critical medical condition the day after he was arrested and placed in detention (i.e. on 23 July 2003), the police failed to seek medical assistance for at least three hours (paras. 2.7 and 3.3).

6.3 The Committee recalls that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6 and 7 of the Covenant.[8] In the instant case, the Committee observes that all investigative

[6] See communication No. 1756/2008, *Zhumbaeva* v. *Kyrgyzstan*, Views adopted on 19 July 2011, para. 8.6.

[7] See communication No. 1225/2003, *Eshonov* v. *Uzbekistan*, Views adopted on 22 July 2010, para. 9.2.

[8] See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant. See also communications No. 1619/2007, *Pestaño* v. *Philippines*, Views

steps taken by the State party were carried out by officers of Moragahahena Police Station, that is, the same police forces that arrested and detained Sunil Hemachandra (para. 3.9); that the investigation ordered on 8 August 2003 by the Magistrate of Horana was closed, further to the Attorney General's decision of 29 April 2004 not to pursue charges for assault; that it took the Supreme Court seven years to rule on the fundamental rights petition filed by the authors; and that in its decision of 6 August 2010, the Supreme Court discarded the possibility of the victim's custodial death being a result of torture, without ordering any independent investigation to ascertain the facts and identify possible perpetrators: no police officer was identified as a suspect or interrogated, let alone being suspended or brought to justice. In the absence of any explanation by the State party, the Committee concludes that the State party's investigations into the suspicious circumstances of the death of Sunil Hemachandra were inadequate. The Committee concludes that the State party's authorities, either by act or omission, are responsible for not taking adequate measures to protect Sunil Hemachandra's life, and to properly investigate his death and take appropriate action against those found responsible, in breach of article 6 (para. 1), read alone and in conjunction with article 2 (para. 3), of the Covenant.

6.4 The Committee takes note of the authors' allegations under article 7 of the Covenant with respect to Sunil Hemachandra, namely that he was subjected to severe beatings on the head and abdomen during the course of his arrest and his transfer to the Moragahahena Police Station detention facility on 22 July 2003. Furthermore, the Committee observes that despite his critical medical condition on the following day, characterized by uninterrupted bleeding, to which the detention authorities were alerted, the latter failed to seek medical assistance for several hours (paras. 2.6. and 2.7). In the absence of any information from the State party in that regard, the Committee finds a violation of article 7 of the Covenant with respect to Sunil Hemachandra.

6.5 Having found a violation of articles 6 and 7 of the Covenant, the Committee will not examine separately the authors' allegations under article 10 of the Covenant.

6.6 The Committee takes note of the authors' allegation that, by failing to launch appropriate investigations into their son and nephew's death, the State party has left them in continuous mental suffering. The Committee observes that although close to 12 years have elapsed since the death of Sunil Hemachandra, the authors still do not know the exact circumstances surrounding it, and the State party's authorities have not indicted, prosecuted or brought to justice anyone in connection with this custodial death in the suspicious circumstances already described. The Committee acknowledges the continued anguish and mental stress caused to the authors, as close relatives of a deceased detainee, and considers that it amounts to a breach of article 2 (para. 3), read in conjunction with article 7, of the Covenant, in regard to them.[9]

6.7 Regarding article 9, the Committee takes note of the authors' allegations that in the late evening of 22 July 2003, five officers from the Moragahahena police broke into the second author's house; that they started beating Sunil Hemachandra, whom they had found sleeping in his room; that they subsequently proceeded to arrest Sunil Hemachandra, without informing him of the reasons for his arrest; that the latter was arbitrarily detained, without any possibility of challenging the legality of his detention; that he could not contact his relatives; and that he was not legally represented. In the absence of any rebutting

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adopted on 23 March 2010, para. 7.2; No. 1447/2006, *Amirov* v. *Russian Federation*, Views adopted on 2 April 2009, para. 11.2; and No. 1436/2005, *Sathasivam* v. *Sri Lanka*, Views adopted on 8 July 2008, para. 6.4.

[9] See *Eshonov* v. *Uzbekistan* (note 7 above), para. 9.10; and *Amirov* v. *Russian Federation* (note 8 above), para. 11.7.

information from the State party, the Committee concludes that the rights of Sunil Hemachandra under article 9 of the Covenant were violated.

7. The Human Rights Committee, acting under article 5 (para. 4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before the Committee reveal violations by Sri Lanka of article 6 (para. 1), read alone and in conjunction with article 2 (para. 3), of article 7, and of article 9 (paras. 1, 2 and 4), in respect of Sunil Hemachandra; and of article 2 (para. 3), read in conjunction with article 7, in respect of the authors.

8. In accordance with article 2 (para. 3 (a)) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, which includes a prompt, thorough and independent investigation into the facts; ensuring that the perpetrators are brought to justice; and ensuring reparation, including the payment of adequate compensation and a public apology to the family. The State party should also take measures to ensure that such violations do not recur in the future.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them translated into the official languages of the State party and widely disseminated.